

MONTANA LEGISLATIVE HISTORY

Chapter 503 19 92

Bill H _____ S 339 Original bill & history ☒ c

H. Committee on Natural Resources

S. Committee on Local Govt

Hearing Date(s) Mar 24 ☒ c

Hearing Date(s) Feb 18 ☒ c

Apr 02 ☒ c

Feb 20 ☒ c

_____ ☐ c

_____ ☐ c

4/11/4 ☒ c

_____ ☐ c

Conf Com.
~~Date Out~~

4/11/4 ☒ c 2:00 pm
5:00 pm

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

4/21 TRANSMITTED TO GOVERNOR
 4/28 SIGNED BY GOVERNOR
 CHAPTER NUMBER 412
 EFFECTIVE DATE: 04/28/97—SECTIONS 3 & 9
 EFFECTIVE DATE: 07/01/98—SECTIONS 1, 2 & 4-8

SB 339 INTRODUCED BY GROSFIELD *LC0845 DRAFTER: COLHOUN*

CLARIFY THE REVIEW OF CERTAIN PARCEL DIVISIONS

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO LOCAL GOVERNMENT		
2/18	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	49	0
2/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO NATURAL RESOURCES		
3/24	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED AS AMENDED	95	5
4/07	3RD READING CONCURRED	89	9
	RETURNED TO SENATE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS NOT CONCURRED	50	0
4/11	CONFERENCE COMMITTEE APPOINTED		
4/14	HEARING		
4/17	HEARING		
4/18	CONFERENCE COMMITTEE REPORT NO. 1		
4/18	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	42	0
4/19	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
	HOUSE		
4/11	CONFERENCE COMMITTEE APPOINTED		
4/18	CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	18
4/21	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	80	16
4/24	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 503		
	EFFECTIVE DATE: 05/01/97		

SB 340 INTRODUCED BY GROSFIELD, ET AL. *LC0816 DRAFTER: PETESCH*

REVISE THE LAWS GOVERNING BALLOT ISSUES

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO STATE ADMINISTRATION		
2/18	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	49	1
2/25	3RD READING PASSED	47	3
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

INTRODUCED BY Grasfield ^{Senate} BILL NO. 339

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
AND AMENDING SECTIONS 76-3-103, 76-3-201, 76-3-207, AND 76-3-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following ~~words or phrases shall have the following meanings~~ definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor ~~duly~~ appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant ~~thereto~~ to this chapter.

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(7) "Immediate family" means a spouse, children, and parents.

~~(7)(8)~~ "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of

1 which cannot be determined without a survey or trigonometric calculation.

2 ~~(8)~~(9) "Planned unit development" means a land development project consisting of residential
3 clusters, industrial parks, shopping centers, or office building parks that ~~emprise~~ compose a planned
4 mixture of land uses built in a prearranged relationship to each other and having open space and community
5 facilities in common ownership or use.

6 ~~(9)~~(10) "Plat" means a graphical representation of a subdivision showing the division of land into
7 lots, parcels, blocks, streets, alleys, and other divisions and dedications.

8 ~~(10)~~(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the
9 layout of streets, alleys, lots, blocks, and other elements of a subdivision ~~which~~ that furnish a basis for
10 review by a governing body.

11 ~~(11)~~(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter
12 67, to practice surveying in the state of Montana.

13 ~~(12)~~(13) "Registered professional engineer" means a person licensed in conformance with Title 37,
14 chapter 67, to practice engineering in the state of Montana.

15 ~~(13)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a
16 subdivision of land.

17 ~~(14)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more
18 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United
19 States government section, exclusive of public roadways, in order that the title to or possession of the
20 parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further
21 includes a condominium or area, regardless of its size, that provides or will provide multiple space for
22 recreational camping vehicles or mobile homes.

23 ~~(15)~~(16) (a) "Tract of record" means:

24 (i) a parcel of land, irrespective of ownership, that can be identified by legal description,
25 independent of any other parcel of land, using documents on file in the records of the county clerk and
26 recorder's office;

27 (ii) each individual parcel of land identified by a legal description unless the parcel has been joined
28 with one or more other parcels and has a legal description that describes the resulting single larger parcel;
29 and

30 (iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on

a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger parcel.

(b) The term does not apply to multiple parcels shown on a single deed or other instrument."

Section 2. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division of land ~~which that~~:

(1)(a) is created by order of any court of record in this state or by operation of law or ~~which that~~, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, {Title 70, chapter 30};

(2)(b) is created to provide security for construction mortgages, liens, or trust indentures;

(3)(c) creates an interest in oil, gas, minerals, or water ~~which that~~ is ~~now or hereafter~~ severed from the surface ownership of real property;

(4)(d) creates cemetery lots;

(5)(e) is created by the reservation of a life estate;

(6)(f) is created by lease or rental for farming and agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division."

Section 3. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.

(1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or ~~which~~ that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter;

(c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid."

Section 4. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for bonding requirements to ensure construction of public improvements.

(1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall to~~ provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation

1 of the improvements within a period specified by the governing body and expressed in the bonds or other
2 security. The governing body shall reduce bond requirements commensurate with the completion of
3 improvements.

4 (b) In lieu of requiring a bond or other means of security for the construction or installation of all
5 the required public improvements under subsection (2)(a), the governing body may approve an incremental
6 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or
7 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied
8 before development of future increments.

9 (3) Approval by the governing body of a final plat prior to the completion of required improvements
10 and without the provision of the security required under subsection (2) is not an act of a legislative body
11 for the purposes of 2-9-111."

12 -END-

SENATE LOCAL GOVERNMENT

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ									
SB0280	VAN VALKENBURG, FRED	2/05	2/11	INCREASE COURT REPORTERS SALARIES	DO PASS	2/18	VOTE: 5-3		2/19
SB0294	GROSFIELD, LORENTS	2/06	2/13	LOCAL REGULATION OF CASINOS	TABLED ON	02/20	VOTE: 8-1		
SB0308	BECK, TOM	2/07	2/13	ENACT GOVERNMENT ACCOUNTABILITY ACT	PASS AS AMENDED	2/20	VOTE: 8-1		2/21
SB0311	MCCARTHY, BEA	2/08	2/18	REVISE ABSENTEE BALLOT PROCEDURE TO PROVIDE FOR SECRECY	PASS AS AMENDED	2/20	VOTE: 8-1		2/21
SB0315	MCCARTHY, BEA	2/08	2/18	MODIFY DEFINITION OF "CONTAINER SITE"; DEFINE THE TERM "TRANSFER STATION"	DO PASS	2/18	VOTE: 9-0		2/19
SB0321	HALLIGAN, MIKE	2/10		PROVIDE FOR A MOBILE HOME COURT MEDIATOR			VOTE:	JUDICIARY	
SB0328	DOHERTY, STEVE	2/11	2/18	INCREASING MINIMUM RETIREMENT BENEFITS FOR CERTAIN MUNICIPAL POLICE OFFICERS	DO PASS	2/20	VOTE: 5-4		2/21
SB0333	LYNCH, J. D.	2/12	2/18	EXPAND MEMBERSHIP IN CONSOLIDATED GOV'T FIRE DEPARTMENT RELIEF ASSOCIATIONS	TABLED ON	02/19	VOTE: 9-0		
SB0339	GROSFIELD, LORENTS	2/12	2/18	CLARIFY THE REVIEW OF CERTAIN PARCEL DIVISIONS	PASS AS AMENDED	2/20	VOTE: 9-0		2/21
SJ0010	BECK, TOM	2/13	2/18	URGING THE BOARD OF LAND COMMISSIONERS TO LEASE THE OLD DMV OFFICE	DO PASS	2/18	VOTE: 9-0		2/19

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on February 18, 1997, at
3:10 p.m., in Room 405.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Don Hargrove (R)
Sen. John "J.D." Lynch (D)
Sen. Walter L. McNutt (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Martha Colhoun, Legislative Services Division
Jodi Jones, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 311, SB 315 Posted: 2/10/97
SB 328, SB 333, SB 339 Posted: 2/12/97
SJR 10 Posted: 2/13/97

Executive Action: SB 280 Do pass
SB 315 Do pass
SJR 10 Do pass
SB 333 Tabled
SB 248 Tabled
SB 261 Tabled

HEARING ON SB 315

Sponsor: SENATOR BEA MCCARTHY, SD 29, Anaconda

Proponents:

Alan Bradshaw, Granite Co.

HEARING ON SB 339

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber

Proponents:

John Shontz, MT Assoc. of Realtors
William Spilker, MT Assoc. of Realtors
Max Pigman, Self
Jim Richard, MT Assoc. of Planners

Opponents: None

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber presented SB 339. This bill is clarifying a review of certain parcel divisions and makes minor changes to the subdivision act. The bill clarifies immediate family, parents, spouse and children. Page 2 clarifies tract of record by added lines 27-30. He said if a person owns the north half of the north half of a section but the deed doesn't describe it that way; instead it says the land owner has lots one, two, three and four of section X and if a person wanted to combine those into just one parcel then the land owner has to take an action to do this. The language in this bill tries to clarify this. He also said that before the court system can order a division of land they have to notify the governing body. This addresses divorce or state proceedings. He used the example of a state proceeding in his county where a man died and he had three children and three parcels of land. They were 20 acre tracts that were not adjacent to each other. The judge instead of giving tract A to child A etc. he split each of those three parcels into three parts so now there were nine parcels. This bill says the court has to notify the governing body so they can comment before making a decision. He explained page 4, the law says if a person is going to do a public improvement such as a road the developer has to build the road immediately or put a bond to satisfy the governing body that the road will be built. The problem comes as to what option is a person going to take as there can be some problems with this. If there is a 200 acre sub-division and the developer wants to develop the lower one third first but he starts developing it and he runs out of money or he dies etc. and now there is a big road scar through the sub-division. The local governing body is not hurt by this as they still can require adequate security and bonding. The bill in section 3 discusses mortgage exclusion. He used the example of having 20 acres and he wants to build a house. He goes to borrow money and puts two acres of that 20 down on a mortgage. He runs out of money and defaults on the loan and now the bank owns two acres. Most of the time it is not a problem but some jurisdictions have a lot of problems with this.

{Tape: 2; Side: B; Approx. Time Count: 5:17 p.m.; Comments: .}

11

Proponents' Testimony:

John Shontz, MT Assoc. of Realtors, spoke in favor of SB 339. He said page 2, line 23, needed to have the language not with standing 43USC753. That refers to the federal survey statutes, because surveyors have been having difficulty dealing with definitions of division of land dealing with government lots. He said on page 4, line 17, the security mortgage issue is of some concern. The bank takes property on a bad loan and they won't be able to sub-divide and sell under this amendment. Lenders will be less likely to lend money if they cannot use parcels as security.

William Spilker, MT Assoc. of Realtors, rose in support of SB 339. He said page 4, lines 17 and 18 does apply to the mortgage finance exemption. If that is inserted, it will cause this type of review to defeat the original intent of the mortgage exemption applied to under the sub-division act. He said line 28, page 4 is beneficial to have the developers option as to whether they want to put up a bond or improvement installed before final approval. The governing body should have a say because they review all engineering criteria and determine how much the bond amount will be. This legislation merely enforces existing law, it does not create any new tract of land, the division of land still comes under the sub-division act, and clarifies the 1993 act.

Max Pigman, Self supported SB 339. He said the language immediate family member could cause some mis-interpretation. He passed out testimony (EXHIBIT 8). He said he had a client that had elderly parents and they wanted to move back to Montana so the client and his wife could take care of them. He wanted to provide a spot for them to live on within his ten acres. Lewis and Clark Co. denied the gift to a family member of this piece of land because the parents are not considered an immediate family member. His client decided that his parents could purchase his house and then gift it back to his client to be in compliance with the law. This was denied because the previous application was reviewed and they decided the current application was a way to evade the law. The language clarifies family in this bill and will help avoid these types of problems.

Jim Richard, MT Assoc. of Planners, supported SB 339. He said the mortgage exemption from a planning stand point has not been a problem. It is extremely important for people building a house to have that exemption to provide for security. He said page 4, line 28, the developer should not always be in the driver's seat in making decisions. There are certain criteria for a sub-division to function properly and the authority should not be taken away from local government.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR HARGROVE asked if on page 4, the language should be deleted on line 28. SENATOR GROSFIELD said he had some amendments to try to fix that problem (EXHIBIT 9 & 10). If it cannot be fixed by these amendments then it can be deleted from the bill.

SENATOR SPRAGUE asked if the language on page 1, line 28 should read lineal descent of family. SENATOR GROSFIELD said parents were his main concern and that has been addressed now. But he also doesn't want to open it to anybody like great, great grandchildren etc. He feels this policy decision should be left up to the committee.

Closing by Sponsor:

SENATOR GROSFIELD said this is a simple bill and he closed.

{Tape: 2; Side: B; Approx. Time Count: 5:38 p.m.; Comments: .}

EXECUTIVE ACTION ON SB 333

Motion/Vote:

SENATOR GLASER MOVED TO TABLE SB 333. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 311

Discussion:

SENATOR LYNCH discussed the amendments proposed by Clerk and Recorders (EXHIBIT 5).

SENATOR HARGROVE said this is an unfunded mandate and maybe this problem should be solved locally.

SENATOR BECK said the most important thing is protecting the secrecy of the ballot and it should be standard to all counties.

SENATOR GLASER said a democracy exists because of the right to vote and is more sacred than life.

SENATOR BECK said those people that want secrecy should be entitled to it.

SENATOR VAN VALKENBURG said lets hold off on a vote till the next meeting.

EXECUTIVE ACTION ON SB 315

Motion:

SENATOR ESTRADA MOVED SB 315 DO PASS.

L2C 95

SB 339

- (3) It fits a previously established pattern of land divisions and land transfers; or
 - (4) It will create three or more parcels that were subdivided from the original tract; or
 - (5) The applicant has used exemptions to create parcels from the original tract or other tracts; or
 - (6) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or
 - (7) The proposed division of land has been previously denied under any other exemption.
2. EXEMPTION AS A SINGLE GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY [Section 76-3-207(1)(b), MCA]:
- a. A "member of the immediate family" may include only the grantor's spouse, son, and daughter, whether by blood or adoption.
 - b. There is a rebuttable presumption that a division of land and a transfer, proposed as an exempt "gift or sale to family member," is or will be an inappropriate use of the exemption under the Act and the Regulations, thereby making the proposed division and transfer subject to subdivision review, if after July 1, 1973:
 - (1) The original or any subsequent tract, from which the parcel created for transfer is to be segregated, was exempted from subdivision review pursuant to the exemptions listed in Section C.1.; or
 - (2) The parcel to be transferred is not intended for a homesite for the transferee; or
 - (3) The transfer could be accomplished by a "relocation of common boundary lines" under Section C.1.; or
 - (4) It will become one of three or more parcels that were subdivided from the original tract; or
 - (5) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or
 - (6) The proposed division of land fits a pattern of land divisions and land transfers; or
 - (7) The applicant has used exemptions to create parcels from the original tract or other tracts; or
 - (8) The proposed division of land has been previously denied under any other exemption; or

D. Review Criteria

1. Gift or Sale to Member of Immediate Family ("Family Conveyance"): The Attorney General has defined "Immediate family" as: the spouse, children or parents of the grantor. ←
Certificates of survey claiming this exemption must meet the following conditions or be presumed to have been adopted for purposes of evading the Act:
 - a. The grantee is the landowner's spouse, parent, or child by blood or adoption.
 - b. The proposed parcel will leave no more than one remainder of less than 20 acres.
 - c. The proposed gift or sale to the immediate family member is the first sale or gift utilizing the "immediate family member exemption" which has been utilized by the grantor for that family member grantee within Jefferson County.
 - d. The certificate of survey must show:
 1. DHES approval of the exempted parcel;
 2. the name of the grantee, relationship of grantee to landowner and the parcel to be conveyed under this exemption;
 3. a LANDOWNER'S certification of eligibility;
 4. the exemption claimed Section 76-3-207(1)(b), MCA
 - e. A deed or other instrument of conveyance shall accompany the certificate of survey.
3. Division to Provide Security for a Construct Mortgage, Lien or Trust Indenture:
 - a. While the MSPA does not require that these divisions of land be surveyed, a survey may be filed. No deeds or other instruments may be recorded, not a certificate of survey filed unless the following documents are submitted to the Clerk and Recorder:

June 7, 1990
Mr. Mike McGrath
Mr. Paul Stahl
Office of the County Attorney
Lewis and Clark County
228 Broadway
Helena, MT 59601

RE: Subdivision and Platting Act/Immediate Family Member Exemption

Dear Mr. McGrath and Mr. Stahl:

I am writing as counsel for the Montana Association of REALTORS®. The Association has become aware, through a number of its Members, of a situation presently pending in Lewis and Clark County. This situation involves Mr. and Mrs. Tim Walker and their desire to divide a piece of real property, utilizing the statutory exemption for transfers to immediate family members found in the Subdivision and Platting Act. The situation concerns the ability of a Grantor to utilize the Immediate Family Member Exemption in dividing and then transferring a parcel of property to his or her parent. I am advised that the County's interpretation of the Subdivision and Platting Act and its own Subdivision Regulations denies the use of a child to parent transfer as an immediate family member exemption.

On behalf of the Association, I would like to encourage Lewis and Clark County to reconsider its position. The law in Montana and the controlling interpretations thereof make it clear that the child to parent transfer, is permitted as an immediate family member exemption.

The Subdivision and Platting Act as you well know requires local and state review of certain divisions of land. However, the Legislature has provided a number of exemptions from this local review requirement. One of these is for transfers to immediate family members. In relevant part, Montana Code Annotated § 76-3-207 provides as follows:

"Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not

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Mr. Mike McGrath
Mr. Paul Stahl
June 10, 1996
Page 2

subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions . . . (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family. . ."

While the preceding language provides the exemption for transfers to immediate family members, the Subdivision and Platting Act does not expressly define what relationships constitute immediate family members.

In a February 6, 1974, Attorney General's Opinion, Attorney General Robert L. Woodahl, addressed the meaning of the term "Immediate Family Member." In that opinion, 35 A.G. Op. 70 (1974) Attorney General Woodahl found as follows:

The term "immediate family," as used in section 11-3862, R.C.M. 1947, means the spouse of the grantor and the children of the grantor by blood or adoption.

On November 8, 1979 in a response to the attorney for the Board of Professional Engineers and Land Surveyors, who specifically inquired whether a child to parent transfer constituted an immediate family member transfer, Attorney General Mike Greely clarified the 1974 Woodahl opinion. In that opinion Attorney General Greely stated as follows:

"While this opinion [35 A.G. Op. 70 (1974)] was obviously written in contemplation of a parent-to-child transfer, since those are most commonly encountered, there is nothing therein which expressly or even impliedly excludes application of the exemption to child-to-parent transfers. . . . Either a child or a parent can own land, and the definitive factor is not whether the transfer is made up or down the family tree, but rather whether it is made between persons who are within the 'immediate family' relationship. Following the holding of Opinion No. 70, the persons within that relationship include parents and children by blood or adoption. As long as the sale or gift is made between persons in that relationship it is entitled to the exemption of 76-3-207(b), MCA, unless it is adopted for purposes of evading the Act."

This Greely opinion was not a published opinion. Rather, it was a private letter opinion. As these letter opinions may be difficult to quickly obtain, I enclose a copy of this particular letter for your reference.

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17

Mr. Mike McGrath
Mr. Paul Stahl
June 10, 1996
Page 3

Despite the fact that the Greely opinion was not published, it is entitled to the same weight and precedent as is any published opinion of the Attorney General. No distinction is present under the law, between published and unpublished Attorney General Opinions. As a result of Attorney General Woodahl's 1974 opinion and the clarification of the opinion issued by Attorney General Greely in 1979, the position taken by Lewis and Clark County is inconsistent with the Attorney General's opinion on this very issue.

Under Montana law, "If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney or an attorney employed or retained by any state officer, board, commission or department, the attorney general's opinion is controlling unless overruled by a State District Court or Supreme Court." See Mont. Code Ann. § 2-15-501(7). Additionally, Attorney General opinions acquiesced in by the Legislature, while not binding on the Supreme Court, are persuasive and will be upheld if not erroneous. See *State ex rel. Ebel v. Schye*, 130 Mont. 537, 541, 305 P.2d 350, 353 (1956). "Opinions issued by state officers or agencies which conflict with the Attorney General's opinions on the same question must yield to the Attorney General's opinions." See, 35 A.G. Op. 68 (1974). Thus, the position taken by Lewis and Clark County, must yield to that advanced by the Attorney General.

Lewis and Clark County cannot in its local Subdivision Regulations, narrow the existing immediate family member exemption by adopting a definition or requirement that would narrow the statutory exemption. Pursuant to Montana Code Annotated §76-3-501 each county is charged with enacting local regulations. This section goes on to describe the nature of the delegation of power entitling the various counties to enact local subdivision regulations. Specifically, Montana Code Annotated §76-3-501 provides as follows:

"Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water,

Mr. Mike McGrath
Mr. Paul Stahl
June 10, 1996
Page 4

drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services."

None of these areas in which the counties are to address their local regulations has anything to do with narrowing the scope of the existing statutory exemptions, nor in defining the terms set forth in the act. The same lesson was illustrated in *State ex rel. Leach v. Visser*, 234 Mont. 438, 767 P.2d 858 (1988) and *State ex rel. Swart v. Casne*, 172 Mont. 302, 564 P.2d 983 (1977). The Court in *Casne* addressed this issue as follows:

This grant of authority [Montana Code Annotated §76-3-501] does not include the right to promulgate regulations in direct conflict with the Act. Where, as here, the Act provides for exemption of occasional sales from the subdivision requirements, DCA cannot prescribe subdivision regulations eliminating the exemption for the reasons heretofore stated. An administrative agency is not a "super legislature" empowered to change statutory law under the cloak of an assumed delegated power.

See, *Casne*, at 308-09, 564 P.2d at 986. As a result any argument that the issue involves not an interpretation of the statutory immediate family member exemption, but that of the county's local regulation, fails.

I hope in your consideration of this issue that Lewis and Clark County realizes that the opinion advanced by Attorney General Woodahl and Greely are the correct interpretations and will, in the Walker's instance and all future applications for an immediate family member exemption, recognize that just as the exemption applies from parent to child, so too it applies from child to parent.

Sincerely,

SULLIVAN & TABARACCI

John K. Tabaracci

JKT/tb
Enc.

430 Ryman, Missoula, Montana 59802
Telephone (406) 721-9700 Telecopier (406) 721-5838



LEWIS AND CLARK COUNTY

City County Building
P.O. Box 1724
316 North Park
Helena, Montana 59624
Telephone 406/447-8304

Board of County Commissioners

In the matter of the Howard and Cecelia Walker appeal of the decision by the Lewis and Clark County Subdivision Review Committee not to grant a family exemption on Lot B on Certificate of Survey No. 288644.

FINDINGS OF FACT

1. The original survey for the above-referenced tract was 20+ acres and was filed on July 16, 1976.
2. On or about April 17, 1978, an Occasional Sale (Lot B) and Remainder Survey (Lot A) was filed for Glen Drake, COS #288644.
3. On or about August 1978, a mortgage survey, COS #293611, was filed splitting Lot A into two 5+ acre tracts.
4. On January 22, 1983, a Retracement Survey was filed for Glen Drake for the eastern portion of Lot A, designated on COS #293611.
5. On May 12, 1989, Timothy Walker purchased Lot B as designated on Certificate of Survey #288644.
6. On March 29, 1996, Timothy Walker applied for a Family Sale Exemption to transfer a portion of Lot B to his mother.
7. The application for the Family Exemption was disallowed because the family gift to a parent does not meet the definition of immediate family found in the Lewis and Clark County Subdivision Regulations, so the application was determined to be invalid.
8. On June 11, 1996, Timothy Walker sold Lot B to Howard Walker, his father.
9. On June 14, 1996, Howard and Cecelia Walker applied for a Family Sale Exemption to transfer a portion of Lot B to Timothy Walker.
10. The Subdivision Review Committee denied Howard and Cecelia Walker's claim for an exemption based on the following criteria set forth in the Lewis and Clark Subdivision Regulations, Appendix J, Section D(2) a(1); (4); (6); and on the transfer of property from son to father.



22

Walker Family Exemption Hearing
Findings of Fact
Page 2

11. Howard and Cecelia Walker appealed the Committee's decision to the Board of County Commissioners.
12. Following proper notification, a hearing on the appeal was held before the Lewis and Clark Board of County Commissioners at 3:30 p.m., on July 24, 1996, in Room 309 of the City/County Building.
13. Appearing and testifying for the appellant were: Timothy Walker, P.O. Box 65, Fort Harrison, MT 59636; Rebekah Walker, P.O. Box 65, Fort Harrison, MT 59636; Max Pigman, 900 N. Montana Avenue, #A4, Helena, MT 59601; and Cecelia Walker, 6295 Elkhorn Road, Helena, MT. Appearing and testifying for the Committee was: Mr. Robert Rasmussen, Planning Director, Lewis and Clark County Planning Department, City/County Building, Helena, MT 59624.
14. Mr. Timothy Walker testified he wanted to convey a portion of the property to his parents because his father's health was failing. Mr. Walker further testified that he sold Lot B to his parents with the intent that a portion of the lot would be transferred to him and his wife under the family exemption provision. He stated that he believed he was following the law and would qualify for a family transfer.
15. Mr. Max Pigman, a realtor representing the Walkers, testified Mr. Timothy Walker contacted him a year ago to market his home so that he could purchase a place where both he and his parents could have two separate homes. Mr. Pigman further testified that he recommended that Timothy Walker transfer land to his parents through the use of the Family Transfer and he had based this advice on an informal letter of opinion from the Attorney General that incorporated "parents" into the definition of "immediate family."
16. Cecelia Walker testified that in applying for the family transfer, it was not her intent to evade the Subdivision and Platting Act.
17. Mr. Rasmussen presented the information used by the Subdivision Review Committee to make their determination and reviewed the criteria used to make their determination and provided the following information with regard to each criteria as outlined in the Lewis and Clark Subdivision Regulations, Appendix J, Section D(2)b:
 - (1) The original tract from which the proposed parcel was to be created through previous exemptions in the Subdivision and Platting Act. An Occasional Sale was used in 1978 and a Retracement Survey was used in 1983 to create parcels exempted from subdivision review;
 - (4) If approved, the proposed transfer, by its configuration, will become one of three or more parcels that were subdivided from the original tract;

(6) The pattern was established through the Occasional Sale and subsequent divisions of land.

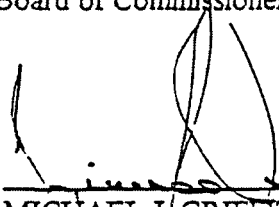
18. Mr. Pigman testified that he did not encourage the Walkers to go through the minor subdivision process because it was too cumbersome and time consuming.
19. Rebekah Walker reiterated her husband's testimony in that it was not their intent to evade the law, and the purpose of the family transfer was to allow her and Timothy to be closer to his parents.

CONCLUSIONS OF LAW

The proposed division of land attempts to evade the Montana Subdivision and Platting Act and the County Subdivision Regulations adopted thereunder.

THEREFORE, the Lewis and Clark County Board of Commissioners deny the appeal.

DATED this 31st day of July, 1996.



MICHAEL J. GRIFFITH, CHAIRMAN

cc: Timothy & Rebekah Walker
Robert Rasmussen

Amendments to Senate Bill No. 339
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Local Government

Prepared by Martha Colhoun
February 17, 1997

1. Title, line 5.
Strike: "76-3-207,"

2. Page 3, line 21.
Following: line 20
Insert: "(3) A sale of a division of land created under
subsection (1)(b) subjects the division of land to the
provisions of this chapter."

3. Page 3, line 23 through page 4, line 21.
Strike: section 3 in its entirety
Renumber: subsequent section

Amendments to Senate Bill No. 339
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Local Government

Prepared by Martha Colhoun
February 18, 1997

1. Page 1, line 17.

Following: "tract"

Insert: "of record"

2. Page 2, line 23.

Strike: "i"

3. Page 2, line 24.

Strike: "(i) a"

Insert: "an individual"

Following: "land"

Strike: ", " through "ownership,"

4. Page 2, line 26.

Strike: "i"

Insert: "."

5. Page 2, line 27 through page 3, line 3.

Strike: subsections (ii), (iii), and (b) in their entirety

Insert: "(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not operate to merge parcels of land under subsection (16)(b)(i) unless the instrument contains, and the owner subscribes the words, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or similar words clearly expressing the owner's intent to effect a merger of parcels."

6. Page 3, line 12.

Following: "indentures"

Insert: "solely to enable a purchaser of a tract under a contract for deed to provide security for a loan to pay for the construction of a dwelling on the tract that is created under subsection (1)(b) and is located within the perimeter boundaries of a larger tract being purchased under the

contract for deed. After the tract is created and initially conveyed to the purchaser under the contract for deed, the tract created under subsection (1)(b) may be reconveyed only:

- (i) by the purchaser under the contract for deed to a qualified trustee under Title 71, chapter 1; or
- (ii) by a lending institution authorized to do business in Montana under the laws of Montana or of the United States in the event that the purchaser under the contract for deed defaults in the repayment of the debt secured by the tract. If a lending institution reconveys the tract as the result of a default, subsequent conveyances of the tract are not subject to the restrictions of subsection (1)(b)."

**MONTANA SENATE
1997 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE**

ROLL CALL

DATE _____

2-18-97

[illegible]

SEN:1997
wp.rollcall.man
CS-09

NAME Janet Ellis

ADDRESS Box 595 Helena

HOME PHONE _____ WORK PHONE _____

REPRESENTING MT Audubon

APPEARING ON WHICH PROPOSAL? SB 339

DO YOU: SUPPORT ☒ OPPOSE _____ AMEND ☒

COMMENTS:

MT Audubon supports this bill as amended by the sponsor. We want to make it clear that we oppose the addition of "of record" inserted in the definition of "division of land" on page 1 — We understand that the sponsor has agreed to take this out of his proposed amendments.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-18-97

SENATE COMMITTEE ON LOCAL GOVT

BILLS BEING HEARD TODAY: SB 339

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
W ^M M. SPILKER	MT ASSN REACTORS	339	X	
John Shantz	MT ASSN REACTORS	339	X	
Janet Ellis	MT Audubon	339	X Amend. by Sponsor	
Deborah Smith	MT Chapter, Sierra Club	339	X Amend. to delete §4	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By CHAIRMAN TOM BECK, on February 20, 1997, at
3:24 p.m., in Room 405.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Don Hargrove (R)
Sen. John "J.D." Lynch (D)
Sen. Walter L. McNutt (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Martha Colhoun, Legislative Services Division
Jodi Jones, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 255 Posted: 2/17/97

Executive Action: SB 137 Tabled
SB 294 Tabled
SB 308 Do pass as amended
SB 311 Do pass as amended
SB 328 Do pass
SB 339 Do pass as amended

HEARING ON HB 255

Sponsor: REPRESENTATIVE BOB LAWSON, HD 80, Whitefish

Proponents:

Gordon Morris, MT Assoc. of Counties
Mike Griffith, Lewis & Clark Co. Commissioner
Charles Brooks, Yellowstone Co. Commissioner
Gloria Paladichuk, Richland Co. Commissioners

SENATOR SPRAGUE said the quicker they retire the longer they are on the retirement system and they are going to run out of cash. The idea is to get another job because people are young enough to do this.

SENATOR HARGROVE said the GABA bill was tabled in committee.

Vote:

MOTION TO DO PASS SB 328 CARRIED 5-4 ON A ROLL CALL VOTE.

{Tape: 2; Side: A; Approx. Time Count: 4:59 p.m.; Comments: .}

EXECUTIVE ACTION ON SB 339

Amendments:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber explained amendments to SB 339 (EXHIBIT 10). He also discussed the current statutes (EXHIBIT 11).

Motion/Vote:

SENATOR HARGROVE MOVED TO ADOPT THE AMENDMENTS. MOTION CARRIED UNANIMOUSLY.

MOTION/VOTE:

SENATOR ESTRADA MOVED SB 339 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 255

Motion:

SENATOR ESTRADA MOVED HB 255 BE TABLED.

Discussion:

SENATOR VAN VALKENBURG said they should hold off till next meeting to vote on this.

SENATOR ESTRADA withdrew her motion.

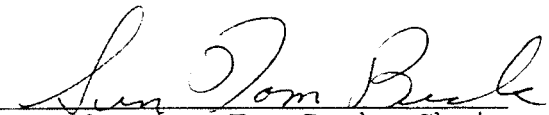


SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 21, 1997

MR. PRESIDENT:

We, your committee on Local Government having had under consideration Senate Bill 339 (first reading copy -- white), respectfully report that Senate Bill 339 be amended as follows and as so amended do pass.

Signed: 
Senator Tom Beck, Chair

That such amendments read:

1. Title, line 5.
Strike: "76-3-207,"

2. Page 1, line 28.
Following: "children"
Insert: "by blood or adoption"

3. Page 2, line 23.
Strike: ";

4. Page 2, line 24.
Strike: "(i) a"
Insert: "notwithstanding 43 U.S.C. 753, an individual"

5. Page 2, line 26.
Strike: ";

6. Page 2, line 27 through page 3, line 3.
Strike: subsections (ii), (iii), and (b) in their entirety
Insert: "(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of

 Amd. Coord.
Sec. of Senate

410913SC.STS

31

land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or clearly expresses the owner's intent to effect a merger of parcels."

7. Page 3, line 23 through page 4, line 21.
Strike: section 3 in its entirety
Renumber: subsequent section

-END-

Amendments to Senate Bill No. 339
First Reading Copy

Requested by Sen. Grosfield
For the Committee on Local Government

Prepared by Martha Colhoun
February 19, 1997

1. Title, line 5.
Strike: "76-3-207,"

2. Page 1, line 28.
Following: "children"
Insert: "by blood or adoption"

3. Page 2, line 23.
Strike: "i:"

4. Page 2, line 24.
Strike: "(i) a"
Insert: "notwithstanding 43 U.S.C. 573, an individual"

5. Page 2, line 26.
Strike: "i:"
Insert: "."

6. Page 2, line 27 through page 3, line 3.
Strike: subsections (ii), (iii), and (b) in their entirety
Insert: "(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:
(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or
(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.
(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, 'This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument' or clearly expresses the owner's intent to effect a merger of parcels."

7. Page 3, line 23 through page 4, line 21.
Strike: section 3 in its entirety
Renumber: subsequent section

43 § 752

Note 102

2-20-97

L. NO. 58 339

on such official plat certified to the state by the general land office and the interior department. *Cragin v. Powell*, La. 1888, 9 S.Ct. 203, 128 U.S. 691, 32 L.Ed. 566.

A state patent under 1 Rev.St. 1852, p. 471, regulating the sale and reclamation of swamp lands donated by the United States for a specified price per acre, conveys only the surveyed portion above the meander line. *Tolleston Club of Chicago v. Carson*, 1919, 123 N.E. 169, 188 Ind. 642.

§ 753. Lines of division of half quarter sections; how run

In every case of the division of a quarter-section the line for the division thereof shall run north and south, and the corners and contents of half quarter-sections which may thereafter be sold, shall be ascertained in the manner and on the principles directed and prescribed by section 752 of this title, and fractional sections containing one hundred and sixty acres or upwards shall in like manner as nearly as practicable be subdivided into half quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half quarter-section, the line for the division thereof shall run east and west, and the corners and contents of quarter quarter-sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior.

(R.S. § 2397.)

Historical Note

Codification. R.S. § 2397 derived from Acts Apr. 24, 1820, c. 51, § 1, 3 Stat. 566; Apr. 5, 1832, c. 65, 4 Stat. 503.

Library References

Public Lands § 24.

C.J.S. Public Lands §§ 30, 31, 33.

Notes of Decisions

Construction with other laws 1
Division of quarter section 2
Judicial notice 6
Subdivision of fractional section
Generally 3
Discretion 4
Form and content 5

1. Construction with other laws

This section and sections 52, 79, 82 note, 672, 676, former section 677

678, former section 687, 751 and 752 and Acts March 26, 1804, c. 35, 2 Stat. 277, March 3, 1805, c. 43, 2 Stat. 343, March 3, 1807, c. 47, 2 Stat. 446, April 30, 1810, c. 35, 2 Stat. 590, April 16, 1816, c. 52, 3 Stat. 285, March 18, 1818, c. 18, 3 Stat. 409, March 3, 1819, c. 92, 3 Stat. 521 relating to sale of public lands are in pari materia and must be treated as together constituting one law, although they were enacted at different times. *Coal Creek Coal Co. v. Chicago T.H. & S.F.*

Government patents to uplands bordering on a lake convey title to the actual margin of the lake, though the surveyed meandered line does not coincide therewith, in view of Civ. Code, § 830, so that a state patent, purporting to convey shore lands between the meandered line and the margin of the lake under the Act Mar. 24, 1893 (St. 1893, p. 341), gave no title where there had been no recession or drainage of the water of the lake. *Craig v. White*, 1921, 202 P. 648, 187 Cal. 489.

Ch. 18 SURVEY

Ry. Co., 1944, 53 N.E.2d 179, 114 Ind.App. 627.

2. Division of quarter section

The surveyor general, in making a plat where there was no return in the survey of the line run in the field, dividing a quarter section into halves, must, on dividing a quarter into east and west halves, draw a north and south line from a point equally distant from the southeast and southwest corners of the section, and thus divide the quarter into halves equal in quantity. *Wood v. Mandrilla*, 1914, 140 P. 279, 167 Cal. 607.

Where a quarter section containing an excess over 160 acres is to be divided, the excess must fall on the exterior half. *Grover v. Paddock*, 1882, 84 Ind. 244.

3. Subdivision of fractional section—Generally

There is no legal subdivision of the public lands less than a quarter of a quarter section, or forty acres, except in the case of fractional sections. *Warren v. Van Brunt*, Minn. 1874, 86 U.S. 646, 19 Wall. 646, 22 L.Ed. 219. See, also, *State v. Pryor*, 1852, 13 Ark. (8 Eng.) 142.

The surveyor general has not authority to extend a south fraction north of the east and west quarter line of the section, and such act on his part is void. *Keyser v. Sutherland*, 1886, 26 N.W. 865, 59 Mich. 455. See, also, *Brown v. Clements*, Ala. 1845, 44 U.S. 650, 3 How. 650, 11 L.Ed. 767; *Wilson v. Hoffman*, 1888, 38 N.W. 558, 70 Mich. 552.

Where a fractional section has been subdivided under the statute and the rules and regulations prescribed in conformity therewith, a deficiency in the contents of the section must, as between a quarter quarter section and a residuary fraction, fall entirely on the latter, and cannot be apportioned between them. *Wharton v. Littlefield*, 1857, 30 Ala. 245.

4. Discretion

Some discretion is allowed the surveyor general in the subdivision of fractional sections containing more than 160 acres, and he is not obliged absolutely to lay off a full quarter or half quarter section, though the fraction is capable of such a subdivision. *Gazzam v. Phillips*, Ala. 1858, 61 U.S. 372, 20 How. 372, 15 L.Ed. 958.

The Act of Apr. 24, 1820 (incorporated in part in this section) and the instructions issued under it, did not require the absolute platting of every quarter or half quarter of which the section was susceptible; but contemplated the exercise of discretion so as to

43 § 753

Note 5

prevent small and inconvenient fractions of a fractional section. 1837, 3 Op.Atty.Gen. 281.

5. Form and content

It is the duty of the surveyor general to lay out a fractional section in such manner that an entire quarter section may be had if such fraction will admit of it, and the surveyor general has no right to divide a fractional section by arbitrary lines so as to prevent a regular quarter section from being taken up. *Brown v. Clements*, 1845, 44 U.S. 650, 3 How. 650, 11 L.Ed. 767. See, also, *Stolp v. Hoyt*, 1867, 44 Ill. 219; *Kraut v. Crawford*, 1865, 18 Iowa 549, 87 Am.Dec. 414.

Where the north half of section 4, township 16 north, range 15, Wagoner county, was subdivided by the official government geological survey in lots 1, 2, 3, and 4, but the lines between said lots were not established, and the owners of lot 2 petitioned the county surveyor of Wagoner county to establish the dividing line between lots 1 and 2, and the county surveyor in making his survey was unable to find or locate the northeast or northwest corner of said section, and reported them as lost or obliterated corners, and proceeded to establish said corners, and in establishing the same the width of the section, as determined by him, was 5,326.4 feet, and, in establishing the lines between the different lots, established the lines making lot 1, 1,326.5 feet wide, lot 2, 1,326.8 feet wide, lot 3, 1,326.8 feet wide, and lot 4, 1,346.3 feet wide, doing so by using certain meandering corners established on said section along the Arkansas river, this method was erroneous since by virtue of section 1711, Rev.Laws 1910, and this and the preceding sections and the rules and regulations of the General Land Office in regard to reestablishing of subdivision lines, the county surveyor in locating the dividing lines between said lots should have divided the total width of the section by four and made each lot the same width, or a distance of 1,331.6 feet wide, and the dividing line between lots 1 and 2 should be established 1,331.6 feet west from the east line of said section. *Overton v. Leonard*, 1920, 192 P. 221, 79 Okl. 219.

When the course of a running stream through a fractional section prevents the subdivision of the quarter sections into 80-acre tracts, the subdivision of a quarter section by the United States surveyor into two tracts divided by the stream is not in contravention of the act. *Stein v. Ashby*, 1854, 24 Ala. 521.

It is the duty of surveyors general to divide fractional sections containing over 160 acres

**MONTANA SENATE
1997 LEGISLATURE
LOCAL GOVERNMENT COMMITTEE**

ROLL CALL

DATE

2/20/97

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31

HOUSE NATURAL RESOURCES

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

	3/03	3/21	3/24, 4/2	CONCUR AS AMENDED	4/4	VOTE: 18-0	
SB0332	MILLER, KEN		WASTE TIRE DISPOSAL SITE BONDING				
	3/03	3/10		CONCUR AS AMENDED	3/14	VOTE: 11-6	3/20
SB0334	GROSFIELD, LORENTS		IMPLEMENT ARTICLE IX, SECTION 1 OF THE MT CONSTITUTION				
	3/03	3/24		TABLED	4/2	VOTE: 10-8	
SB0337	GROSFIELD, LORENTS		RATIFY ROCKY BOY'S RESERVED WATER COMPACT				
	3/03			CONCUR	4/2	VOTE: 16-1	
SB0339	GROSFIELD, LORENTS		REVIEW CERTAIN PARCEL DIVISIONS				
	3/03	3/24		CONCUR AS AMENDED	4/2	VOTE: 16-2	
SB0342	BROOKE, VIVIAN		CHANGES TO U. CLARK FORK LEASING/CHANGE STATUTES AND COMMITTEE STRUCTURE				
	3/03			CONCUR AS AMENDED	4/2	VOTE: 16-0	
SB0359	TOEWS, DARYL		POTENTIAL SALE OF STATE LAND IN DANIELS COUNTY; FUNDS TO ASSIST EXCHANGES				
	3/03			TABLED	4/4	VOTE: 10-8	
SB0377	GROSFIELD, LORENTS		GENERALLY REVISE CECRA; ORPHAN SHARES				
	3/03	3/10		CONCUR AS AMENDED	4/2	VOTE: 18-0	
SJ0013	MILLER, KEN		URGE CROWN BUTTE SUPPORT				
	3/03	3/14	TABLED 3/21 (10-8)	CONCUR AS AMENDED	4/4	VOTE: 12-6	

25

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on March 24, 1997, at 3:00 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 339 (3/7), SB 334 (3/7)
Executive Action: SB 273 & SB 315 talked about &
decided to defer till next
meeting 4/2, HB 607 DO PASS
(16-2)

HEARING ON SB 339

Opening Statement by Sponsor: Sen. Lorents Grosfield, SD 13
{Tape: 1; Side: a; Approx. Time Count: 1.5; Comments: none.}

Proponents' Testimony:

Jim Richard, MT Wildlife Federation & MT Association of Planners
{Tape: 1; Side: a; Approx. Time Count: 8.2; Comments: none.}

John Schontz, MT Association of Realtors
{Tape: 1; Side: a; Approx. Time Count: 8.8; Comments: none.}

William Spilker, real estate broker
{Tape: 1; Side: a; Approx. Time Count: 12.0; Comments: none.}

Opponents' Testimony: none

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 16.5; Comments: none.}

{Tape: 1; Side: a; Approx. Time Count: end; Comments: flipped tape at the end.}

{Tape: 1; Side: b; Approx. Time Count: 0.1; Comments: none.}

Closing by Sponsor: Sen. Grosfield closed
{Tape: 1; Side: b; Approx. Time Count: 6.9; Comments: none.}

HEARING ON SB 334

Opening Statement by Sponsor: Sen. Lorents Grosfield, SD #13
{Tape: 1; Side: b; Approx. Time Count: 10.1; Comments: none.}

Proponents' Testimony:

Leo Barry, attorney, representing MT Power Company & Pegasus Gold submitted Exhibit #1 (sb033401.amc)
{Tape: 1; Side: b; Approx. Time Count: 16.3; Comments: Exhibit #1.}

Frank Crowley, attorney on behalf of Asarco submitted Exhibit #2
{Tape: 1; Side: b; Approx. Time Count: 20.2; Comments: Exhibit #2.}

John Bloomquist, MT Stockgrower's Association
{Tape: 1; Side: b; Approx. Time Count: 26.0; Comments: none.}

Don Allan, MT Woodproducts Association
{Tape: 1; Side: b; Approx. Time Count: 26.6; Comments: none.}

Steve Pilcher, Western Environmental Trade Association
{Tape: 1; Side: b; Approx. Time Count: 27.0; Comments: none.}

Opponents' Testimony:

Jim Jensen, Montana Environmental Information Center
{Tape: 1; Side: b; Approx. Time Count: 27.8; Comments: none.}

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 3/24/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Bob Raney	✓		
Rep. Jon Ellingson	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Carley Tuss	✓		
Rep. Trudi Schmidt	✓		
Rep. Emily Swanson	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Haley Beaudry	✓		
Rep. Douglas T. Wagner	✓		
Rep. Doug Mood	✓		
Rep. Scott J. Orr	✓		
Rep. Cliff Trexler	✓		
Rep. Lila V. Taylor	✓		
Rep. Jay Stovall	✓		
Rep. Karl Ohs	✓		
Chairman Dick Knox	✓		

VISITOR REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

DATE: 3/24/97

BILL NO: SB 339 SPONSOR: Sen. Grosz

[illegible]

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on April 2, 1997, at 3:10 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: Rep. Carley Tuss (D)

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 337 (3/26), SB 342 (3/26)
Executive Action: SB 273 (18-0) DO CONCUR as
AMENDED, SB 337 (16-1) DO
CONCUR, SB 342 (16-0) DO
CONCUR as AMENDED, SB 339 (16-
2) DO CONCUR as AMENDED, SB
377 (18-0) DO CONCUR as
AMENDED, SB 315 was discussed
and Subcommittee is working on
amendments executive action
was further deferred until
4/4, SB 334 (10-8) was TABLED

Motion/Vote: Question was called for, (18-0) the amendment is adopted

Motion/Vote: Question was called for on the Bill as amended, (18-0), Rep. Harper will carry the Bill on the floor

EXECUTIVE ACTION ON SB 339

Motion: Rep. Tash moves DO CONCUR

Amendments: Rep. Tash submits amendment sb033904:amc

Discussion: Mr. Waddel explains the amendments
{Tape: 3; Side: b; Approx. Time Count: 4.0; Comments: none.}

A discussion ensues about the amendment and segregating amendments 1,3 & 5 from the amendment to be discussed each separately.

{Tape: 3; Side: b; Approx. Time Count: 6.1; Comments: none.}

Rep. Tash moves amendments 1,2,4 & 5 as written.

{Tape: 3; Side: b; Approx. Time Count: 20.8; Comments: none.}

Discussion about the amendments, Reps. Harper, Curtiss, Ohs, Raney, Trexler, Story and Swanson comment.

{Tape: 3; Side: b; Approx. Time Count: 22.3; Comments: none.}

Motion/Vote: Question is called for, (16-2) Reps. Harper & Raney vote no

Amendment: Rep. Trexler moves a conceptual amendment to be added to p. 4. Sen. Grosfield has no objection to the amendment.

{Tape: 3; Side: b; Approx. Time Count: 28.1; Comments: none.}

Discussion: Rep. Story comments.

{Tape: 3; Side: b; Approx. Time Count: 29.9; Comments: none.}

Motion/Vote: Question is called for, (17-1) amendment is adopted
Rep. Harper votes no

Amendment: Rep. Harper proposes and additional amendment that would add the phrase "or by adoption before the age of 18".

{Tape: 3; Side: b; Approx. Time Count: 31.0; Comments: none.}

Discussion: Rep. Story opposes the amendment.

{Tape: 3; Side: b; Approx. Time Count: 32.0; Comments: none.}

{Tape: 4; Side: a; Approx. Time Count: 0.1; Comments: none.}

Motion/Vote: Question is called for, (9-9) amendment dies

Vote: Question on Bill as amended is called for, (16-2) Bill passes out of Committee, Reps. Harper and Raney vote no

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 4/2/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Bob Raney	✓		
Rep. Jon Ellingson	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Carley Tuss			absent
Rep. Trudi Schmidt	✓		
Rep. Emily Swanson	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Haley Beaudry	✓		
Rep. Douglas T. Wagner	✓		
Rep. Doug Mood	✓		
Rep. Scott J. Orr	✓		
Rep. Cliff Trexler	✓		
Rep. Lila V. Taylor	✓		
Rep. Jay Stovall	✓		
Rep. Karl Ohs	✓		
Chairman Dick Knox	✓		

HOUSE NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 4/2/97

BILL NO. SB 339

MOTION: BY: Tash, DO PASS

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)			
Rep. Hal Harper (VC Min.)		/	
Rep. Bob Raney		/	
Rep. Jon Ellingson			
Rep. Aubyn A. Curtiss			
Rep. Carley Tuss			
Rep. Trudi Schmidt			
Rep. Emily Swanson			
Rep. Robert R. Story, Jr.			
Rep. Haley Beaudry			
Rep. Douglas T. Wagner			
Rep. Doug Mood			
Rep. Scott J. Orr			
Rep. Cliff Trexler			
Rep. Lila V. Taylor			
Rep. Jay Stovall			
Rep. Karl Ohs			
Chairman Dick Knox			

Total Vote: 16 Yes 2 No

Decision: passed

Amendments

Motion: amendment accepted

vote on amendment:

amendment file name:

adopted

16-2

sb033904.xml

1,2,4,5

Harper, Raney

adopted

17-1

Trexler
Concurrence

Rep. Swanson
dis will carry on the
9-9

Harper

Amendments to Senate Bill No. 339
Third Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Martha Colhoun
March 28, 1997

1. Title, line 5.

Strike: the first "AND"

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
RETROACTIVE APPLICABILITY DATE"

2. Page 1, line 20.

Following: "chapter."

Insert: "The conveyance of a tract of record or an entire parcel
of land that was created by a previous division of land is
not a division of land."

3. Page 2, line 24.

Strike: "NOTWITHSTANDING 43 U.S.C. 753, AN INDIVIDUAL"

Insert: "a"

4. Page 3, line 16.

Following: "OR"

Insert: "a similar statement, in addition to the legal
description of the aggregate parcels,"

Strike: "EXPRESSES"

Insert: "expressing"

5. Page 5.

Following: line 24

Insert: "

NEW SECTION. Section 4. Severability. If a part of [this
act] is invalid, all valid parts that are severable from the
invalid part remain in effect. If a part of [this act] is invalid
in one or more of its applications, the part remains in effect in
all valid applications that are severable from the invalid
applications.

NEW SECTION. Section 5. Effective date -- retroactive
applicability. [This act] is effective on passage and approval,
and [section 1] applies retroactively, within the meaning of 1-2-
109, to local regulation of subdivisions."

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 339

Call to Order: By CHAIRMAN TOM BECK, on April 14, 1997, at 3:43 p.m., in Room 319

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Dorothy Eck (D)
Sen. Lorents Grosfield (R)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Emily Swanson (D)

Members Excused: None

Members Absent: None

Staff Present: Serena Andrew, Secretary
Martha Colhoun, Legislative Services Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: Conference Committee on SB 339
POSTED 4/14/97.

{Tape: 1; Side: A; Approx. Time Count: 3:43 p.m.}

HEARING ON SB 339

CHAIRMAN TOM BECK said SB 339 was SENATOR LORENTS GROSFIELD'S bill and asked him to comment.

SENATOR GROSFIELD said the House added amendments; those causing the problem are 1 and 2 by REPRESENTATIVE EMILY SWANSON, House Committee of the Whole, April 4, 1997, 1:01 p.m. (EXHIBIT #1). These amendments deal with a review of a subdivision done by a judge. It was an attempt to keep judges from dividing property without going through the subdivision review process, but failed because of the separation of powers issue.

The language on page 4, lines 6, 7 and 8 of the bill says the court must notify the governing body and present written comment on any subdivision it makes. That was the reason for introducing the bill.

He hoped the House could be convinced to agree with eliminating amendments 1 and 2.

Apparently amendment No. 3 (see EXHIBIT #1) addresses some technical issue in the bill.

{Tape: 1; Side: A; Approx. Time Count: 3:49 p.m.}

REPRESENTATIVE CLIFF TREXLER commented that when he had read the bill and talked to a local judge he found it was one of the few areas where it is deemed proper to make a decision as long as it is all right with someone.

He said judges split up families and estates without consulting anyone in divorce proceedings. He thought this idea was putting a burden on judges and it was something that shouldn't be done.

SENATOR GROSFIELD said he firmly believed the legislature was the policy making branch of government, but often an activist judiciary tries to do some law making. Also, there are professionals who attempt to avoid provisions of the subdivision law.

Over the last three sessions, the legislature has discussed the subdivision law. Most of the arguments have been over the loopholes in the law. The present bill does not close the loopholes; it merely says the court has to notify the governing body.

{Tape: 1; Side: A; Approx. Time Count: 3:55}

CHAIRMAN BECK asked what local authorities could do if a judge did notify them. SENATOR GROSFIELD said he must notify them and give them an opportunity to comment before he makes his final decision.

SENATOR DOROTHY ECK said it was a matter of judges needing to be educated and updated on laws. CHAIRMAN BECK asked if she thought a judge would make a decision without understanding the subdivision laws.

REPRESENTATIVE TREXLER said he thought a precedent would be set if a judge were required to consult certain people before making a decision.

SENATOR GROSFIELD said this issue was not similar to other court operations.

{Tape: 1; Side: A; Approx. Time Count: 3:59}

In response to REPRESENTATIVE STOVALL'S question, SENATOR GROSFIELD said there was no penalty in the bill for noncompliance by a judge.

47

REPRESENTATIVE STOVALL commented that he didn't think it made much difference one way or the other, and CHAIRMAN BECK agreed.

SENATOR GROSFIELD said his county commissioners had asked him to fix this problem.

REPRESENTATIVE SWANSON said she was just beginning to understand the origin of the issue and she was glad to hear the reason for it.

CHAIRMAN BECK said the discussion was about amendments 1 and 2 and suggested a vote.

MOTION/VOTE: SENATOR GROSFIELD moved to DELETE amendments 1 and 2 by REPRESENTATIVE SWANSON, House Committee of the Whole, April 4, 1997, 1:01 p.m. The motion CARRIED UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Time Count: 4:07 p.m.}

REPRESENTATIVE STOVALL said that REPRESENTATIVE MCGEE'S amendments removing 43 U.S.C. 753, were deleted on the floor. He said he had a suggested amendment (EXHIBIT #2). The amendment attempts to define what is being done.

SENATOR GROSFIELD said he presumed REPRESENTATIVE STOVALL was not suggesting doing anything with line 27 where the key word is "original." On the very first survey it may have come out as lots. If that were ever changed to something else, the result would not be a tract of record. He asked if they would be separate parcels if they were always described as lots.

If, the first time they changed hands, they were no longer described as lots but as the N½N½ you could not call them lots if they were sold together.

REPRESENTATIVE SWANSON asked what this would do to the ability to sell them later as separate lots if the original survey described them as lots. She thought the committee was agreed that it didn't want unreviewed subdivisions to go on because of the way the original survey was done.

{Tape: 1; Side: A; Approx. Time Count: 4:11}

REPRESENTATIVE STOVALL said usually government lots occur on the edge of a township and an effort was being made to recognize that legal description. He understood there might be other places that might have more acres but have never been described that way. The tract would still be described as 670 acres unless it was separated; then it would have to be surveyed and come under review.

CHAIRMAN BECK asked why REPRESENTATIVE MCGEE struck 43 U.S.C. 753 (the original federal survey). REPRESENTATIVE SWANSON said

everyone found it confusing to deal with federal law while dealing with state law.

REPRESENTATIVE STOVALL said they were trying to do something federal law already did and describe it in a way everyone could understand. REPRESENTATIVE MCGEE had agreed with the language in the amendment he (SENATOR STOVALL) had presented (see EXHIBIT #2).

REPRESENTATIVE TREXLER said they should remember to include documents of transfer and asked John Shontz to explain it.

{Tape: 1; Side: A; Approx. Time Count: 4:15}

John Shontz, Association of Realtors, said it was another way to articulate that there were adjustment lots. This amendment says if that property were transferred as "Section 6" through history although not in the original government survey, those tracts were not tracts of record. Through a title change, government lots have been broken out as lots. The idea behind the amendment was not to create thousands of tracts of record where they did not exist.

REPRESENTATIVE SWANSON asked if it were necessary to do this.

Mr. Shontz said if the state were operating in a vacuum, it might not be an issue, but the Attorney General has been asked for an opinion because people are confused about it. He thought it would be better to have the legislature decide.

REPRESENTATIVE SWANSON said she didn't know what the amendment said. She asked for an interpretation she could understand.

{Tape: 1; Side: A; Approx. Time Count: 4:20}

SENATOR GROSFIELD commented that it said "that can be identified by legal description using documents of transfer other than the original one." He didn't think that was clear. The first time a transfer is made it's a record, but the name could be changed by a subsequent transfer. He thought it should relate to the most current document on file within the records of the County Clerk and Recorder. He asked how many cases were possible.

Jim Richard said "hundreds of thousands."

John Shontz said he didn't think any new tracts of record were being created. It gets back to the issue of being identified on the original deed.

REPRESENTATIVE STOVALL said he didn't think it made any difference whether it was government lots or not.

{Tape: 1; Side: B; Approx. Time 4:25}

REPRESENTATIVE TREXLER said the idea was that if a tract had been transferred it was a tract of record.

SENATOR ECK asked if the committee was sure that was what it wanted to do.

Martha Colhoun said this issue concerns a legal description. The question goes to interpretation.

REPRESENTATIVE TREXLER said perhaps a person has purchased land from three different owners but some attorneys and Clerks and Recorders put them on one deed. REPRESENTATIVE SWANSON said that was what was being covered.

John Shontz commented that the language was intended to cover pseudo-government lots never covered in a transfer before. They appeared that way on the original government survey but that doesn't count - there must be a transfer record.

REPRESENTATIVE STOVALL said he didn't want to go around an environmental review. He wanted to recognize the original patent surveys.

CHAIRMAN BECK asked if the committee were interested in going back to the floor to request a free conference committee.

REPRESENTATIVE STOVALL said he would like to see the issue clarified. REPRESENTATIVE TREXLER agreed.

REPRESENTATIVE SWANSON said she couldn't decide, but an Attorney General's opinion might be a better way to go.

SENATOR GROSFIELD said apparently the issue is before the Attorney General.

{Tape: 1; Side: B; Approx. Time Count: 4:41 p.m.}

CHAIRMAN BECK asked if some language could be devised to follow the tract of record concept.

REPRESENTATIVE SWANSON said if a parcel had always been owned by a single owner then it is a single tract; if sold separately, they are separate tracts of record.

Mr. Shontz said it would be necessary to strike "irrespective of ownership."

CHAIRMAN BECK asked what was wrong with the bill in its present form.

SENATOR GROSFIELD asked if the committee wanted to wait for the Attorney General's opinion.

SENATOR BECK suggested one more meeting and asked for a suitable amendment from **Martha Colhoun**.

Jim Richard pointed out that a free conference committee might not be necessary; in a way, the committee was still dealing with the original amendments.



Comp. Committee
SENATE FISH AND GAME
ENROLL NO. 1
DATE 4/14/97
BILL NO. SB 339

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 339
Representative Swanson

April 4, 1997 1:01 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 339 (second house second reading copy -- tan).

Signed: _____
Representative Swanson

And, that such amendments to Senate Bill 339 read as follows:

1. Title, line 5.
Strike: ", 76-3-201,"
2. Page 3, line 23 through page 4, line 8.
Strike: Section 2 in its entirety
Renummer: subsequent sections
3. Page 6, line 8.
Following: "TO"
Insert: "tracts of record for"
Following: "SUBDIVISIONS"
Insert: "filed before [the effective date of this act]"

-END-

ADOPT

REJECT

91-4

SB 339

HOUSE

711300CW.Hgd

52



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 339
Representative McGee

April 4, 1997 10:10 am
Page 1 of 1

Mr. Chairman: I move to amend **Senate Bill 339** (second house second reading copy -- tan).

Signed: _____
Representative McGee

And, that such amendments to Senate Bill 339 read as follows:

1. Page 2, line 27.

Strike: "NOTWITHSTANDING 43 U.S.C. 753, AN"

Insert: "An"

-END-

ADOPT

REJECT

87-12

SB 339

HOUSE

711010CW.Hgd

53

Conference Committee
SENATE ~~FISH AND GAME~~
EXHIBIT NO. 2
DATE 4/14/97
BILL NO. SB 339

CONFERENCE COMMITTEE AMENDMENT # 2

PAGE 2, LINE 29 AMEND TO READ:

documents on file in the records of the county clerk and recorder's office. PARCELS IDENTIFIED IN THE ORIGINAL GOVERNMENT SURVEY ARE NOT TRACTS OF RECORD UNLESS THEY HAVE BEEN IDENTIFIED IN A SUBSEQUENT SURVEY OR DOCUMENT OF CONVEYANCE.

RATIONALE:

The proposed language clarifies the bill to clearly indicate that only when a parcel of land is identified in a transfer document such as a deed is it a tract of record. Parcels identified in the original government survey but not in a subsequent document of transfer or subsequent survey are not tracts of record unless they have been identified in a subsequent survey or document of conveyance.

51

ROLL CALL VOTE

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 239

DATE 4/14/97 TIME 3:00 ~~A.M.~~ P.M.

NAME	YES	NO
<u>Dech</u>	<u>X</u>	
<u>Shawfield</u>	<u>X</u>	
<u>Eck</u>	<u>X</u>	
<u>Stavall</u>	<u>X</u>	
<u>Prepler</u>		<u>X</u>
<u>Swanson</u>	<u>X</u>	

Gerene Anarew
SECRETARY

Sam Dech
CHAIR

MOTION: Reject amendments 1+2 of Swanson
Committee of the Whole, Apr. 4, 1997, 1:01 pm

LEGISLATIVE TAPE LOG

COMMITTEE

Conf. Com - SB 339

1st MEETING OF 3

MINUTES

CONTENT NOTES

3:43

Ch. Tom Bach - ~~to~~ Grofford's bill.
 San Grofford - Meeting on House
 amendments - wanted to strike 1 & 2 of
 Ex H.

3:49

Rep. Trapper - one piece judge con.
 make decision ~~over~~ ground it. Grofford -
 legislature place to make laws, not judge.
 Bach, Ech & Trapper discussed presents
 & origin of the bill.

3:55

4:07

Motion to strike around 1 & 2 Carigals
 Rep. Stover had amendment Ex #2

4:11

Discussion on government lot.

4:20

Discussion of transfers of ownership

Side B

4:25

Discussion of government lot & legal
 description.

4:41

Discussion track of record

74

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 339, 2nd Meeting

Call to Order: By CHAIRMAN TOM BECK, on April 17, 1997, at 2:00 p.m., in Room 402

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Dorothy Eck (D)
Sen. Lorents Grosfield (R)
Rep. Emily Swanson (D)
Rep. Cliff Trexler (R)
Rep. Jay Stovall (R)

Members Excused: None

Members Absent: None

Staff Present: Serena Andrew, Committee Secretary
Martha Colhoun, Legislative Services Division

{Tape: 1; Side: A; Approx. Time Count: 2:06 p.m.}

HEARING ON SB 339

CHAIRMAN TOM BECK recapped the previous meeting as deleting Amendments 1 and 2. This meeting was called to discuss Amendment 3.

CHAIRMAN BECK said SENATOR LORENTS GROSFIELD had offered an amendment reading, "Page 2, Line 29 amend to read: 'documents on file in the records of the county clerk and recorder's office. PARCELS IDENTIFIED IN THE ORIGINAL GOVERNMENT SURVEY ARE TRACTS OF RECORD ONLY IF THEY HAVE BEEN IDENTIFIED IN A SUBSEQUENT SURVEY OR DOCUMENT OF CONVEYANCE.'" (EXHIBIT #1)

REPRESENTATIVE EMILY SWANSON asked whether "identified" meant parcels or tracts of record.

Bill Spilker, Montana Association of Realtors, thought it meant parcels.

CHAIRMAN BECK asked whether it should be tracts of record or parcels.

Bill Spilker said "parcels identified are tracts of record only if the tracts of record have been identified in a subsequent survey...."

CHAIRMAN BECK asked if anyone would be interested in adding that language to the bill.

{Tape: 1; Side: A; Approx. Time Count: 2:13}

SENATOR GROSFIELD said an Attorney General's (AG) opinion had been requested on this issue.

GEORGE SCHUNK, Assistant AG, said an opinion was requested last fall. The argument was advanced that by surveying a community, parcels showing up on deeds as descriptions in parts of sections or boundaries on U.S. Government Survey maps were divisions of land for purposes of the Subdivision and Platting Act (SPA). If they were already subdivided or transferred and today were part of a larger piece of property, they wouldn't have to go through subdivision review. Work was stopped on this opinion when it appeared there would be legislation on this issue. When REPRESENTATIVE MCGEE'S bill was tabled, work began again. The opinion has not been distributed.

The federal grid system was used during exploration of the west. Government lots were established where sections met and around bodies of water.

Montana acts are more designed to provide review of divisions of land to promote orderly community growth and are very different from federal laws. The division of land definition in the subdivision act will probably control.

When you separate something from common ownership it is a division of land - that holds true whether or not you go to the state subdivision act.

If the committee decides to go to tract of record it will change things and all the legislative history would have to be reviewed to see what was intended.

Mr. Schunk said there are thousands of government lots in Montana. The tract of record definition in the bill was added in 1993. That definition was put in so that Clerks & Recorders could insist that there be an orderly property description before they accept a deed.

{Tape: 1; Side: A; Approx. Time Count: 2:25}

REPRESENTATIVE JAY STOVALL said the government surveys included more than just lots, and asked why that description would be considered a division. If the federal government's description were used, he asked if it would be considered a division.

52

Mr. Schunk said a division is a division. A description like the N~~W~~NW~~4~~ is a good legal description. When you take that good legal description out of a larger parcel and transfer it to someone else you trigger a subdivision review.

As a matter of policy, you could say "all parcels described by U.S. Government Survey are not divisions of land for purposes of the subdivision act and would not require review."

REPRESENTATIVE STOVALL said "under 160 acres." But it sounded like he was saying any division. He could understand it under 160 acres, but not over.

Mr. Schunk said if you purchased 20 acres described as 1/32 Section and then transferred it, the description would be based on government survey and it wouldn't go through subdivision review. You would be just buying and selling 20's, and 20 acre plots are not covered by the subdivision act. If you bought a large ranch and wanted to take one 20 acre plot out and sell it, it would trigger subdivision review.

REPRESENTATIVE STOVALL commented that in other words, **Mr. Schunk** was recognizing the federal government survey if the tract in question were over 160 acres. **Mr. Schunk** said the government surveys are recognized throughout the State of Montana as a means of describing land, but he didn't think that meant divisions of land if that land were being removed from a larger contiguous parcel.

SENATOR GROSFIELD said if he owned 640 acres and purchased it by 20 and 40 acre contiguous increments at different times and wanted to sell the first 20 acres and put the rest with a tract already purchased, would that trigger a subdivision review? **Mr. Schunk** said he hadn't addressed that issue.

SENATOR GROSFIELD asked if he would have aggregated and merged it unless it had been mentioned on the deed.

{Tape: 1; Side: A; Approx. Time Count: 2:33}

Mr. Schunk said if you sell part of your holdings you have to go through subdivision review. Montana law is silent on the issue of merger and aggregation.

SENATOR GROSFIELD said before 1993, the trigger for subdivision review was 20 acres so this was never an issue. When the law went from 20 to 160 acres it became an issue.

Mr. Schunk commented that, in his opinion, not everyone was ready for these issues. The government lots question should be addressed.

{Tape: 1; Side: A; Approx. Time Count: 2:38}

REPRESENTATIVE TREXLER asked that the discussion return to the amendments before the committee - the bill should go forward.

Motion: REPRESENTATIVE STOVALL moved EXHIBIT #1 entitled "Conference Committee Amendment 2."

SENATOR GROSFIELD opposed the amendment because it would prejudice the issue being discussed. The amendment presumes there is a tract of record if it is identified. It would set up a situation where all government lots could be determined to be separate tracts of record avoiding review under the subdivision act.

Vote: A roll call vote showed REPRESENTATIVES STOVALL and TREXLER voting AYE and the remainder of the committee voting NO and the MOTION FAILED.

SENATOR ECK asked about parcels greater than 160 acres - if it would help to add "for purposes of the Montana Subdivision and Platting Act."

SENATOR GROSFIELD commented that statement might prejudice in the opposite direction.

REPRESENTATIVE SWANSON said she wanted to go back to page 1, lines 21-23 referring to Mr. Schunk's comment to tie together division of land and tract of record. If the intent were to say that if you have a parcel that has already been divided once and you convey it, you don't have to go through subdivision review again, you could strike the words on line 21, "tract of record or an entire."

Mr. Schunk thought that was appropriate and would cover the situation she wanted to prevent.

{Tape: 1; Side: B; Approx. Time Count: 2:47}

Martha Colhoun said this language was added in the House Natural Resources Committee. It was part of the MERCER amendments. Its intent was to clarify existing law. If you strike that part it wouldn't do anything.

Motion: REPRESENTATIVE SWANSON moved to STRIKE lines 21-23, amendment #2 of the House Natural Resources Committee.

REPRESENTATIVE TREXLER said "tracts of record" was a problem - it was meant to clarify something. A tract of record would be anything you went into the Court House and conveyed to someone else. He didn't think the language was a problem and he would oppose the amendment.

REPRESENTATIVE STOVALL agreed.

12

Vote: SENATOR ECK and REPRESENTATIVE SWANSON voted AYE; the remainder of the committee voted NO and the MOTION FAILED.

Motion: REPRESENTATIVE SWANSON moved to STRIKE just "tract of record or entire" from line 21, page 1 of the bill.

Vote: SENATOR BECK, REPRESENTATIVES STOVALL and TREXLER voted NO; the remainder of the committee voted AYE and the MOTION FAILED.

{Tape: 1; Side: B; Approx. Time Count: 2:53}

SENATOR GROSFIELD commented that the last amendment from the House said the act applied retroactively. He didn't think subdivisions from the 1930's would be protected.

Mr. Schunk said he wasn't sure retroactively meant before this bill.

SENATOR GROSFIELD said the subdivision act went back to 1973.

Mr. Schunk said it would be important to make the intent clear as that would control the way the bill is interpreted.

Martha Colhoun said she thought they were reading off the Local Government Committee amendment - it was done on the floor. The salmon copy of the bill was filed.

SENATOR GROSFIELD said this amendment was added on the House floor. He didn't think a conference committee could say what it meant.

CHAIRMAN BECK stated that it was time for the Senate to meet and asked committee members to return on adjournment to finish the discussion.

61

Conf. Comm SB 339
SENATE HON. HHS GARDNER
EXHIBIT NO. 1
DATE 4/17/97
BILL NO. SB 339

CONFERENCE COMMITTEE AMENDMENT # 2

PAGE 2, LINE 29 AMEND TO READ:

documents on file in the records of the county clerk and recorder's office. PARCELS IDENTIFIED IN THE ORIGINAL GOVERNMENT SURVEY ARE ~~NOT~~ TRACTS OF RECORD ~~UNLESS~~ THEY HAVE BEEN IDENTIFIED IN A SUBSEQUENT SURVEY OR DOCUMENT OF CONVEYANCE.

→ ONLY IF

RATIONALE:

The proposed language clarifies the bill to clearly indicate that only when a parcel of land is identified in a transfer document such as a deed is it a tract of record. Parcels identified in the original government survey but not in a subsequent document of transfer or subsequent survey are not tracts of record unless they have been identified in a subsequent survey or document of conveyance.

ROLL CALL VOTE

#1

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 239

DATE 4/14/97 4/17 TIME 3:00 3:00 A.M. P.M.

NAME	YES	NO
<u>Dick</u>		X
<u>Griffith</u>		X
<u>Eck</u>		X
<u>Stovall</u>	X	
<u>Prepler</u>	X	
<u>Womson</u>		X

Gene Gwinn
SECRETARY

Sen Dick
CHAIR

MOTION: Exhibit #1 - Gwinn pg 2, line 29 to read
"documents on file ... parcels identified ... document
of conveyance"

ROLL CALL VOTE

#2

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 239

DATE 4/14/97 4/17/97 TIME 3:00-2:00 ~~A.M.~~ P.M.

NAME	YES	NO
<u>Deck</u>		X
<u>Shawfield</u>		X
<u>Eck</u>	X	
<u>Stavall</u>		X
<u>Prepler</u>		X
<u>S. Wousson</u>	X	

Gerene Anarum
SECRETARY

Sam Deck
CHAIR

MOTION: Rep. S. Wousson - "Strike lines 21-23, amend #2
from House Natural Resources Committee."

ROLL CALL VOTE

#3

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 239

DATE ~~4/14/97~~ 4/17/97 TIME ~~3:00:00~~ 2:00:00 A.M. P.M.

NAME	YES	NO
<i>Deck</i>		X
<i>Shawfield</i>	X	
<i>Eck</i>	X	
<i>Stovall</i>		X
<i>Prepler</i>		X
<i>Wanson</i>	X	

Jerome Guarnas
SECRETARY

Sam Deck
CHAIR

MOTION: *Strike "track of record or entire"*
from line 21, pg 1 of bill.

45

LEGISLATIVE TAPE LOG

COMMITTEE

2nd
Conf Com - SD 339
4/17/97

MINUTES

CONTENT NOTES

2:06

Ch. Beck meeting called to finish
4/17/97 meeting

2:13

Sen. Grofford offered amendment (Ex #1)
Terms used in amendment discussed

2:25

Rep. Stovall - asked about discussion
of laws. Schuch & Grofford explained

2:33

Discussed subdivision revision

2:39

Rep. Metler suggested decreasing demands.
Meads.
Rep. Stovall moved Conf Com Amend #2 (Ex 1)
Motion failed
Rep. Swanson suggested striking line 21-23
Amend #2 of House Nat. Res. Com.

2:47

Discussed the suggestion Swanson
moved the suggestion; motion failed.

Rep. Swanson moved to strike "book of record
or estate" line 21 p. 1. Motion failed

2:53

Discussed "retroactive" clause;
decided to meet again on agreement

64

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 339

Call to Order: By CHAIRMAN TOM BECK, on April 17, 1997, at 5:00 p.m., in Room 402.

ROLL CALL

Members Present:

Sen. Thomas A. "Tom" Beck (R)
Sen. Dorothy Eck (D)
Sen. Lorents Grosfield (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: Martha Colhoun, Legislative Services Division
Jodi Jones, Committee Secretary

HEARING ON SB 339

Discussion:

SENATOR LORENTS GROSFIELD discussed amendments to SB 339 (EXHIBIT 1).

Motion:

SENATOR GROSFIELD MOVED TO ADOPT THE AMENDMENTS (EXHIBIT 1).

Discussion:

REP. EMILY SWANSON asked what the effect of this will be and what is the purpose of making it retroactive? SENATOR GROSFIELD said everyone agrees that if you buy 20 acres from one person and 20 from another and so on you can sell any one of them without review. There was never a tract of record before 1973 and there was never local regulation of sub-divisions before the 1940's.

REP. SWANSON asked for an example of someone who bought land in the 1930's and might want to use retroactivity. SENATOR GROSFIELD said if Grandpa Jones bought land and passed it on to his sons and many family generations and one of the owners wanted to part with one of the 20 acre plots, if it was a separate parcel it could be marketed at any time.

67

REP. SWANSON asked if those people would go in and do a title search and establish that Grandpa Jones bought that separately. SENATOR GROSFIELD said yes, you would do a title search.

Vote:

MOTION TO ADOPT AMENDMENTS CARRIED UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Time Count: 5:25 p.m.; Comments: .}

Discussion:

REP. DAN MCGEE, HD 21, Laurel, explained amendments for SB 339 (EXHIBIT 2).

SENATOR GROSFIELD asked about lake and river front property and what affects would this amendment have on lots on township lines. REP. MCGEE said each one of those is a separate entity today and there is nothing that will prohibit people from going out and building a house.

SENATOR GROSFIELD said what about selling it. REP. MCGEE said it is no different than selling one unit without regard to acreage.

SENATOR GROSFIELD said what about an L shaped piece of land, how many can be sold without review? REP. MCGEE said three.

SENATOR GROSFIELD said this is an interesting proposal and compromise. This is a policy issue and river and lake front property are a concern. He drew a diagram to illustrate his point of township and L shaped plots.

REP. MCGEE drew a diagram of a sub-division. He said the real problem is people who build along a river or lake should have to go under review.

SENATOR GROSFIELD said if we leave the bill as it is and forget about the amendment, then what are the chances that it will go to court before the next session. How would the court rule on this issue? George Schunk, Attorney General's Office said it is difficult to know as each plot of land has its own description, etc. Commonly what happens with Attorney General's opinions is they are issued and then they are overruled by the courts or the legislature. This is a large issue and he would rather see a group of legislators resolve it, rather than the court. John Shontz, MT Assoc. of Realtors said he didn't know what would happen in court if the amendments were not added.

SENATOR GROSFIELD asked what would the courts do with the sub-division law and the intent to try and give local government control over sub-division development? Mr. Shontz said it depends on where the case is heard. The best court to go to is the district court.

CS

SENATOR TOM BECK asked if there had ever been a case taken to the federal court that they didn't uphold the federal government survey. Mr. Shontz said no.

REP. JAY STOVALL said if he owns a piece of property and it is divided with the federal government survey and he wants to sell it, can he still use the federal government survey descriptions. Mr. Schunk said that kind of segregation of a parcel might cause this type of a review. However, it would depend on the size of the parcel and other factors.

REP. STOVALL said he wanted an explanation for a track of land that is recognized by the state. He said land has a deed and it is recorded and they all have federal government descriptions. Could you use this to describe these individual pieces of land? Mr. Schunk said yes you can use them to describe the tracts of land.

REP. STOVALL said can you use them to make a division of the land. Mr. Schunk said you can't use them to divide land to escape review by your local county.

REP. STOVALL said if you have sixteen 40's in a section, then the federal government descriptions can be used to sell portions of that section. Mr. Schunk said yes.

REP. STOVALL said he has tried to use this in the past and has been denied the use of the federal government descriptions. Mr. Schunk said 20 and 40 acre parcel already come under review. Unless all 20's were bought separately and sold separately then they wouldn't have to go under review.

REP. CLIFF TREXLER asked when a piece of land is surveyed, it is recognized as a legal description of land. REP. MCGEE said that was correct.

REP. TREXLER said that doesn't mean a piece of land that has been surveyed doesn't have to go under a sub-division review? REP. MCGEE said he cannot sell it without sub-division review.

REP. TREXLER discussed amendments (EXHIBIT 2). REP. MCGEE discussed the amendments further (EXHIBIT 2).

Motion/Vote:

SENATOR GROSFIELD MOVED TO LEAVE THE BILL AS IS WITH PREVIOUS AMENDMENTS AND NOT ADD THE AMENDMENTS BY REP. MCGEE. MOTION PASSED 5-1 WITH REP. TREXLER VOTING NO.

Free Conference
EXHIBIT NO. 1
DATE 4-17-97 5:00pm
BILL NO. SB 339

Amendments to Senate Bill No. 339
Reference Copy

Requested by Sen. Grosfield
For the Conference Committee

Prepared by Martha Colhoun
April 17, 1997

1. Page 6, line 8.
Strike: "OF" through "SUBDIVISIONS"

2

State Conference Com.

EXHIBIT NO. 2

DATE 4-17-97 5:00 p.m.

BILL NO. SB 339

Amendments to Senate Bill No. 339
Reference Copy

Requested by Rep. McGee
For the Conference Committee

Prepared by Martha Colhoun
April 17, 1997

Jay -
review this when
you have time -
it's just a shot
I had @ 3:30
this AM

Dan

1. Page 2.

Following: line 9

Insert: "(9) "Legal description" means:

(a) a metes and bounds or quasi metes and bounds
description;

(b) an aliquot part or government lot created in accordance
with the United States survey system;

(c) a small tract, such as a homestead entry survey or
mineral survey, as defined by the bureau of land management
manual of surveying instructions;

(d) a lot or lot and block created by and shown on a
platted subdivision;

(e) a parcel, tract, or lot created by and shown on a
certificate of survey; or

(f) proportional, area, residual, or exception parcels
referenced in a deed of record."

Renumber: subsequent sections

2. Page 5.

Following: line 29

Insert: "

**NEW SECTION. Section 3. Local government review of certain
tracts of record.** (1) A local governing body may review the
following tracts of record that are proposed to be used for
residential, commercial, or industrial purposes:

(a) those that comprise 1 or more aliquot parts or
government lots of the United States survey; and

(b) those that have an aggregate area of less than 160
acres; and

(c) those that border less than one quarter mile of a
navigable water body.

(2) For tracts of record under subsection (1), the local
governing body may establish rules and procedures for the review
of the following:

(a) legal and physical access;

(b) water availability and sewage and solid waste disposal;

(c) effects on the environment; and

(d) effects on local services.

(3) The review under subsection (2) must follow 76-3-505."

Renumber: subsequent sections

21

ROLL CALL

FREE CONFERENCE or CONFERENCE COMMITTEE

ON BILL NO. SB 339

DATE 4-17-97

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Beck			
Sen. Laurents Crawford			
Sen. Dorothy Eck			
Rep. Jay Stovall			
Rep. Emily Swanson			
Rep. Cliff Trexler			



CONFERENCE COMMITTEE

on Senate Bill 339
Report No. 1, April 18, 1997

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill 339, met and considered the House Committee of the Whole amendments dated April 4, 1997.

We recommend that Senate Bill 339 (reference copy - salmon) be amended further as follows:

1. Title, line 5.
Following: "~~76-3-207,~~"
Insert: ", 76-3-201,"

2. Page 5.
Following: line 9
Insert: "

Section 2. Section 76-3-201, MCA, is amended to read:

"76-3-201. **Exemption for certain divisions of land.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division of land ~~which that~~:

~~(1)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which that~~, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, ~~{Title 70, chapter 30};~~

~~(2)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

~~(3)~~ (c) creates an interest in oil, gas, minerals, or water ~~which that is now or hereafter~~ severed from the surface ownership of real property;

~~(4)~~ (d) creates cemetery lots;

~~(5)~~ (e) is created by the reservation of a life estate;

~~(6)~~ (f) is created by lease or rental for farming and agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division."

Renumber: subsequent sections

ADOPT

REJECT

830948CC.STS

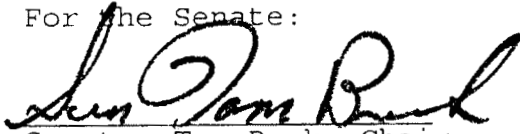
73

April 18, 1997
Page 2 of 2

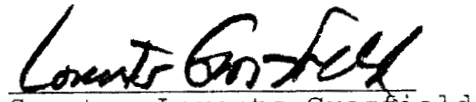
3. Page 6, line 8.
Following: "TRACTS"
Strike: "OF" through "SUBDIVISIONS"

And that this Conference Committee report be adopted.

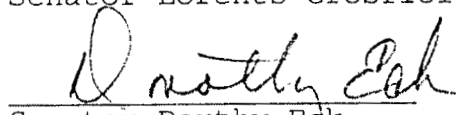
For the Senate:



Senator Tom Beck, Chair



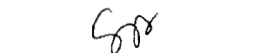
Senator Lorents Grosfield



Senator Dorothy Eck



Amd. Coord.



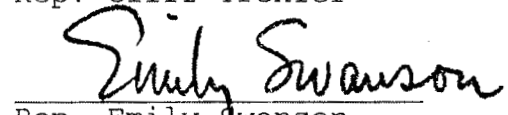
Sec. of Senate

For the House:



Rep. Jay Stoval, Chair

Rep. Cliff Trexler



Rep. Emily Swanson

SENATE BILL NO. 339

INTRODUCED BY GROSFIELD

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS;
AND AMENDING SECTIONS 76-3-103, ~~76-3-201, 76-3-207, 76-3-201,~~ AND 76-3-507, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE ."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following ~~words or phrases shall have the following meanings~~ definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. THE CONVEYANCE OF A TRACT OF RECORD OR AN ENTIRE PARCEL OF LAND THAT WAS CREATED BY A PREVIOUS DIVISION OF LAND IS NOT A DIVISION OF LAND.

(4) "Examining land surveyor" means a registered land surveyor ~~duly~~ appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant ~~thereto~~ to this chapter.

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(7) "Immediate family" means a spouse, children BY BLOOD OR ADOPTION, and parents.

~~(7)~~(8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(8)~~(9) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that ~~emprise~~ compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(9)~~(10) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(10)~~(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision ~~which~~ that furnish a basis for review by a governing body.

~~(11)~~(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(12)~~(13) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(13)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(14)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(15)~~(16) (a) "Tract of record" means:

(i) ~~a~~ NOTWITHSTANDING 43 U.S.C. 753, AN AN INDIVIDUAL parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office;

(ii) ~~each individual parcel of land identified by a legal description unless the parcel has been joined~~

~~with one or more other parcels and has a legal description that describes the resulting single larger parcel;~~
~~and~~

~~(iii) a single larger parcel created pursuant to subsection (16)(a)(ii) that is shown and described on a certificate of survey on file in the office of the county clerk and recorder setting forth the single larger parcel.~~

~~(b) The term does not apply to multiple parcels shown on a single deed or other instrument.~~

(B) EACH INDIVIDUAL TRACT OF RECORD CONTINUES TO BE AN INDIVIDUAL PARCEL OF LAND UNLESS THE OWNER OF THE PARCEL HAS JOINED IT WITH OTHER CONTIGUOUS PARCELS BY FILING WITH THE COUNTY CLERK AND RECORDER:

(I) AN INSTRUMENT OF CONVEYANCE IN WHICH THE AGGREGATED PARCELS HAVE BEEN ASSIGNED A LEGAL DESCRIPTION THAT DESCRIBES THE RESULTING SINGLE PARCEL AND IN WHICH THE OWNER EXPRESSLY DECLARES THE OWNER'S INTENTION THAT THE TRACTS BE MERGED; OR

(II) A CERTIFICATE OF SURVEY OR SUBDIVISION PLAT THAT SHOWS THAT THE BOUNDARIES OF THE ORIGINAL PARCELS HAVE BEEN EXPUNGED AND DEPICTS THE BOUNDARIES OF THE LARGER AGGREGATE PARCEL.

(C) AN INSTRUMENT OF CONVEYANCE DOES NOT MERGE PARCELS OF LAND UNDER SUBSECTION (16)(B)(I) UNLESS THE INSTRUMENT STATES, "THIS INSTRUMENT IS INTENDED TO MERGE INDIVIDUAL PARCELS OF LAND TO FORM THE AGGREGATE PARCEL(S) DESCRIBED IN THIS INSTRUMENT" OR A SIMILAR STATEMENT, IN ADDITION TO THE LEGAL DESCRIPTION OF THE AGGREGATE PARCELS, CLEARLY EXPRESSES EXPRESSING THE OWNER'S INTENT TO EFFECT A MERGER OF PARCELS."

Section 2. ~~Section 76-3-201, MCA, is amended to read:~~

~~"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall may not apply to any division of land which that:~~

~~(1)(a) is created by order of any court of record in this state or by operation of law or which that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, (Title 70, chapter 30);~~

~~(2)(b) is created to provide security for construction mortgages, liens, or trust indentures;~~

1 ~~(3)(e) creates an interest in oil, gas, minerals, or water which that is now or hereafter covered from~~
2 ~~the surface ownership of real property;~~

3 ~~(4)(d) creates cemetery lots;~~

4 ~~(5)(e) is created by the reservation of a life estate;~~

5 ~~(6)(f) is created by lease or rental for farming and agricultural purposes.~~

6 ~~(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify~~
7 ~~the governing body of the pending division and allow the governing body to present written comment on~~
8 ~~the division."~~

9
10 ~~Section 3. Section 76-3-207, MCA, is amended to read:~~

11 ~~"76-3-207. Subdivisions exempted from review but subject to survey requirements—exceptions.~~

12 ~~(1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of~~
13 ~~evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject~~
14 ~~to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:~~

15 ~~(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary~~
16 ~~lines between adjoining properties;~~

17 ~~(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each~~
18 ~~county to each member of the landowner's immediate family;~~

19 ~~(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in~~
20 ~~which the parties to the transaction enter a covenant running with the land and revocable only by mutual~~
21 ~~consent of the governing body and the property owner that the divided land will be used exclusively for~~
22 ~~agricultural purposes;~~

23 ~~(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the~~
24 ~~aggregation of lots; and~~

25 ~~(e) divisions made for the purpose of relocating a common boundary line between a single lot~~
26 ~~within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement~~
27 ~~on the original platted lot or original unplatted parcel continues to apply to those areas.~~

28 ~~(2) Notwithstanding the provisions of subsection (1):~~

29 ~~(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that~~
30 ~~results in an increase in the number of lots or which that redesigns or rearranges six or more lots must be~~

1 ~~reviewed and approved by the governing body and an amended plat must be filed with the county clerk and~~
2 ~~recorder;~~

3 ~~(b) a change in use of the land exempted under subsection (1)(c) for anything other than~~
4 ~~agricultural purposes subjects the division to the provisions of this chapter;~~

5 ~~(c) a sale of a division of land created under 76-3-201(2) subjects the division to the provisions~~
6 ~~of this chapter.~~

7 ~~(3) A division of land may not be made under this section unless the county treasurer has certified~~
8 ~~that all real property taxes and special assessments assessed and levied on the land to be divided have~~
9 ~~been paid."~~

10
11 **SECTION 2. SECTION 76-3-201, MCA, IS AMENDED TO READ:**

12 **"76-3-201. Exemption for certain divisions of land. (1)** Unless the method of disposition is adopted
13 for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ may not apply to any division
14 of land ~~which that~~:

15 ~~(1)(a)~~ (a) is created by order of any court of record in this state or by operation of law or ~~which that~~,
16 in the absence of agreement between the parties to the sale, could be created by an order of any court in
17 this state pursuant to the law of eminent domain, {Title 70, chapter 30};

18 ~~(2)(b)~~ (b) is created to provide security for construction mortgages, liens, or trust indentures;

19 ~~(3)(c)~~ (c) creates an interest in oil, gas, minerals, or water ~~which that~~ is now or hereafter severed from
20 the surface ownership of real property;

21 ~~(4)(d)~~ (d) creates cemetery lots;

22 ~~(5)(e)~~ (e) is created by the reservation of a life estate;

23 ~~(6)(f)~~ (f) is created by lease or rental for farming and agricultural purposes.

24 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
25 the governing body of the pending division and allow the governing body to present written comment on
26 the division."

27
28 **Section 3. Section 76-3-507, MCA, is amended to read:**

29 **"76-3-507. Provision for bonding requirements to ensure construction of public improvements.**

30 (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete

1 required improvements within the subdivision prior to the approval of the final plat.

2 (2) (a) In lieu of the completion of the construction of any public improvements prior to the
3 approval of a final plat, the governing body shall at the subdivider's option allow the subdivider ~~shall to~~
4 provide or cause to be provided a bond or other reasonable security, in an amount and with surety and
5 conditions satisfactory to the governing body, providing for and securing the construction and installation
6 of the improvements within a period specified by the governing body and expressed in the bonds or other
7 security. The governing body shall reduce bond requirements commensurate with the completion of
8 improvements.

9 (b) In lieu of requiring a bond or other means of security for the construction or installation of all
10 the required public improvements under subsection (2)(a), the governing body may approve an incremental
11 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or
12 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied
13 before development of future increments.

14 (3) Approval by the governing body of a final plat prior to the completion of required improvements
15 and without the provision of the security required under subsection (2) is not an act of a legislative body
16 for the purposes of 2-9-111."

17
18 NEW SECTION. SECTION 4. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
19 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
20 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
21 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

22
23 NEW SECTION. SECTION 5. EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS
24 EFFECTIVE ON PASSAGE AND APPROVAL, AND [SECTION 1] APPLIES RETROACTIVELY, WITHIN THE
25 MEANING OF 1-2-109, TO TRACTS OF RECORD FOR LOCAL REGULATION OF SUBDIVISIONS FILED
26 BEFORE [THE EFFECTIVE DATE OF THIS ACT].

27 -END-